

1 The Honorable Judge Robert S. Lasnik  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

9 JAMES MCDONALD,

10 Plaintiff,

11 v.

12 ONEWEST BANK, FSB, NORTHWEST  
13 TRUSTEE SERVICES, INC., MORTGAGE  
14 ELECTRONIC REGISTRATION SYSTEMS,  
15 INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

16 No. C10-1952 RSL  
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**DEFENDANT NORTHWEST  
TRUSTEE SERVICES RESPONSE  
TO PLAINTIFF'S MOTION TO  
ENFORCE COURT ORDER ON  
PRELIMINARY INJUNCTION**

19 COMES NOW Defendant Northwest Trustee Services, Inc. ("NWTS") and responds to  
20 Plaintiff's Ex Parte Motion to Enforce Court Order on Preliminary Injunction.  
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**I. APPLICABLE FACTS**

22 On or about January 25, 2011, the court entered a Preliminary Injunction enjoining  
23 Defendants from foreclosing on Plaintiff's property. Dtk. 24.

24 In compliance with the Preliminary Injunction, Defendants have postponed the trustee's  
25 sale and will continue to postpone the trustee's sale as long as the preliminary injunction is in  
26 effect. *See* Declaration of Heidi E. Buck ("Buck Decl."), ¶¶ 2-3.  
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## II. ARGUMENT

**A. Defendants Have Not Violated the Preliminary Injunction by Postponing the Trustee's Sale.**

Under RCW 61.24.130(6), “[t]he issuance of a restraining order or injunction **shall not prohibit the trustee from continuing the sale** as provided in RCW 61.24.040(6).” (Emphasis added); *Moon v. GMAC Mortg. Corp.*, C08969Z, 2008 WL 4741492 (W.D. Wash. Oct. 24, 2008). RCW 61.24.040(6) in turn provides that “[t]he trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days,” as long as notice is provided to interested parties.

Here, following entry of the Preliminary Injunction, Defendants postponed the sale to February 18, 2011. Buck Decl., ¶ 2. Defendants will continue to postpone the sale within the limitations of RCW 61.24040(6) while the Preliminary Injunction is in effect. Buck Decl., ¶ 3. Accordingly, Defendants have not violated either the Deed of Trust Act or the Preliminary Injunction.

Plaintiff provides no legal authority in support of his request that Defendants be ordered to “Cancel” the sale. As the plain language of the Deed of Trust Act clearly permits postponement while an injunction is in effect, there is no basis for such a request. Thus, it should be denied.

Finally, as there has been no violation of the injunction, there is no basis for sanctions against Defendant Northwest Trustee Services. Accordingly, Plaintiff's request for sanctions should be denied.

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### III. CONCLUSION

For the foregoing reasons, Defendant NWTS requests that Plaintiff's Motion to Enforce Court Order on Preliminary Injunction be denied in entirety.

DATED this 15th day of February, 2011.

# ROUTH CRABTREE OLSEN, P.S.

Heidi E. Buck, WSBA No. 41769  
Of Attorneys for Defendants OneWest  
Bank, Mortgage Electronic Registration  
Systems, Inc., and Northwest Trustee  
Services, Inc.